

AMENDED IN ASSEMBLY APRIL 19, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## Assembly Joint Resolution

**No. 29**

**Introduced by Assembly Member Feuer**

*(Principal coauthor: Assembly Member Portantino)*

**(Coauthors: Assembly Members Ammiano, Block, Blumenfield,  
Brownley, Fuentes, Huffman, Jones, Monning, Portantino, Salas,  
Saldana, Skinner, and Torlakson)**

**(Coauthors: Senators Alquist, Kehoe, and Leno)**

January 21, 2010

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Assembly Joint Resolution No. 29—Relative to domestic partners  
tax equity.

### LEGISLATIVE COUNSEL'S DIGEST

AJR 29, as amended, Feuer. Federal income tax: domestic partners.

This measure would ask the Internal Revenue Service to reconsider a specified memorandum and issue a new memorandum with respect to the federal income tax treatment of property rights of registered domestic partners and same-sex spouses.

Fiscal committee: no.

1 WHEREAS, The Internal Revenue Service (IRS) issued a  
2 memorandum (Office of Chief Counsel IRS Memorandum  
3 200608038 dated February 24, 2006), which indicated that an  
4 individual who is a registered domestic partner in California must  
5 report all of his or her income earned from the performance of his

1 or her personal services, notwithstanding the California Domestic  
2 Partner Rights and Responsibilities Act of 2003; and

3 WHEREAS, As a consequence, for federal income tax purposes  
4 California registered domestic partners could not claim a  
5 community property interest in the income of both partners, but  
6 instead had to report all of each partner's income separately,  
7 without reference to the income of the other partner; and

8 WHEREAS, The IRS memorandum found that state community  
9 property laws apply only to a husband and wife in a heterosexual  
10 marriage, and not outside that context; and

11 WHEREAS, The IRS memorandum further indicated that the  
12 rights afforded domestic partners under the California Domestic  
13 Partner Rights and Responsibilities Act of 2003 were not made an  
14 incident of marriage by the inveterate policy of the state and that  
15 the relationship between registered domestic partners was not  
16 marriage under California law, and that accordingly they could  
17 not file separately with each claiming one-half of the community's  
18 total earned income for federal tax purposes; and

19 WHEREAS, Federal case law holds that the characteristics of  
20 property ownership, including community property, are determined  
21 by the states, and taxation of that property is determined by the  
22 federal government; and

23 WHEREAS, The Supreme Court of the United States has held  
24 that the IRS must defer to state law determining property  
25 ownership, including the existence of community property; and

26 WHEREAS, Pursuant to a Presidential Memorandum Regarding  
27 Preemption issued by the White House on May 20, 2009,  
28 preemption of state law by executive departments and agencies  
29 should be undertaken only with full consideration of the legitimate  
30 prerogatives of the states and with a sufficient legal basis for  
31 preemption; and

32 WHEREAS, California statutes (see Chapter 893 of the Statutes  
33 of 2001, Chapter 421 of the Statutes of 2003, and Chapter 802 of  
34 the Statutes of 2006) and case law (In re Marriage Cases (2008)  
35 43 Cal.4th 757; and Strauss v. Horton (2009) 46 Cal.4th 364)  
36 confirm that registered domestic partners and married same-sex  
37 couples whose marriages remain valid under California law have  
38 the same rights and responsibilities under California law as  
39 different-sex married couples, including those rights and  
40 responsibilities related to community property, and further, that

1 California income tax reporting is the same for registered domestic  
2 partners and married individuals; and

3 WHEREAS, Property, including income, acquired while  
4 domiciled in California by registered domestic partners or married  
5 same-sex couples whose marriages are still valid in California is  
6 community property under California law; now, therefore, be it

7 *Resolved, by the Assembly and Senate of the State of California,*  
8 *jointly,* That the Legislature of the State of California asks the IRS  
9 to reconsider Memorandum 200608038 and issue a new  
10 memorandum based on the fact that settled federal law  
11 acknowledges the state's role in defining property rights and the  
12 federal government's role in deciding how it will be taxed for  
13 federal purposes; furthermore, the enactment of SB 1827 (Chapter  
14 802 of the Statutes of 2006) corrected an exception for state income  
15 tax purposes of earned income from registered domestic partners'  
16 community property under AB 205 (Chapter 421 of the Statutes  
17 of 2003), such that California registered domestic partners and  
18 same-sex spouses now are required to file state income tax returns  
19 using the same rules as are applicable to heterosexual spouses,  
20 including the choice between filing jointly or separately with a  
21 reference to the filer's marital or registration status, thus making  
22 California income tax reporting the same for registered domestic  
23 partners and married individuals regardless of sexual orientation;  
24 and be it further

25 *Resolved,* That the Legislature requests that, consistent with  
26 established legal precedents, the IRS defer to California law on  
27 treatment of property belonging to registered domestic partners  
28 and same-sex spouses, including the existence of community  
29 property, so that when filing separate federal income tax returns,  
30 each registered domestic partner and same-sex spouse should  
31 include in his or her gross income one-half of the community's  
32 income; and be it further

33 *Resolved,* that the Chief Clerk of the Assembly transmit copies  
34 of this resolution to the President and Vice President of the United  
35 States, to the Speaker of the House of Representatives, to the  
36 Majority Leader of the Senate, to each Senator and Representative  
37 from California in the Congress of the United States, to the  
38 Secretary of the Treasury, to the Commissioner of the Internal

- 1 Revenue Service, and to the Internal Revenue Service Office of
- 2 Chief Counsel.

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